

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
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LEGEND

X =

ESOP =

State =

D1 =

D2 =

Dear :

This responds to a letter dated July 28, 2009, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

Facts

According to the information submitted, X was incorporated under the laws of State. X attempted to elect to be treated as an S corporation effective D1. Prior to D1, shares of X were transferred to ESOP. X represents that ESOP complies with the requirements under § 1361(c)(6) to be a valid S corporation shareholder. However, the individual who signed the consent for Form 2553, Election by a Small Business Corporation, on behalf of ESOP may not have had proper authority to do so. As a result of the failure of the proper party to sign the consent for the S corporation election, X's S corporation election may have been ineffective. On D2, stock of X was transferred to an

ineligible shareholder, causing X to no longer be eligible to be an S corporation. X seeks a ruling that X will be treated as an S corporation from D1 to D2.

X represents that X and ESOP treated X consistently with being an S corporation from D1 until D2. Further, X represents that any ineffectiveness of the S election was the result of inadvertent error.

Law and Analysis

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1362(a)(2) provides that such an election shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which it was made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Conclusion

Based solely on the information submitted and the representations made, we conclude that X's election to be treated as an S corporation may have been ineffective due to the failure of its shareholder to properly consent to the election. We also conclude that, if the election was ineffective, the ineffective election constituted an "inadvertent ineffective election" within the meaning of § 1362(f). Therefore, X will be treated as an S corporation from D1 until D2, provided that X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d).

This ruling is conditioned on ESOP's consent to X's S election being filed with the appropriate service center, indicating that the consent is to be associated with the originally filed Form 2553, within 60 days of this letter.

A copy of this letter should be attached to the consent. This letter ruling will be null and void if these conditions are not satisfied.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed concerning whether X was otherwise eligible to be an S corporation, or whether ESOP was otherwise eligible to be a shareholder.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter will be sent to X's authorized representative.

Sincerely,

David R. Haglund

David R. Haglund

Chief, Branch 1

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for § 6110 purposes